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10 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA, ) Criminal Case No. 07-CR-1046-L  
12 )  
13 Plaintiff, ) **ORDER REQUIRING SELL HEARING**  
14 )  
15 v. )  
PEDRO GODINEZ-ORTIZ, )  
Defendant. )  
\_\_\_\_\_ )

16 Presently before the Court is: 1) Defendant Pedro Godinez-Ortiz' ("Defendant") request to  
17 evaluate the sufficiency of the governmental interest in forcibly medicating him; and 2) whether the  
18 Court should proceed forward to a formal *Sell* hearing. Defendant has provided supplemental  
19 authority in support of his opposition to involuntary medication. Specifically, Defendant has  
20 provided this Court with Reporter's Transcripts from a motion hearing held before Judge Whelan in  
21 the case of *United States v. Palos-Juarez*, Case No. 08CR0584, which pertained to the involuntary  
22 medication of a defendant who was also charged with attempted unlawful re-entry after deportation,  
23 in violation of 8 U.S.C. § 1326.

24 Defense counsel primarily argues that under *Sell* this Court is precluded from looking at  
25 Defendant's prior criminal history, and should instead focus solely on the facts of the case  
26 surrounding the offense charged. The Court, however, is not persuaded by Defense counsel's  
27 arguments in light of *United States v. Hernandez-Velasquez*, 513 F.3d 908 (9th Cir. 2008). In  
28 *Hernandez-Velasquez*, the Ninth Circuit concluded that a Defendant's "likely [sentencing] guideline


1 range is the appropriate starting point for the analysis of a crime's seriousness." *Id.* at 919. The Ninth  
2 Circuit further stated that "at least under some circumstances, a violation of § 1326 may constitute  
3 a 'serious' crime sufficient to justify involuntary medication under *Sell*." *Id.*

4 The evaluation of a defendant's prior criminal history aids in determining what constitutes  
5 a serious crime in a § 1326 case due to the sentencing enhancement that is imposed to aggravated  
6 felons (a category which the Defendant falls into) as the enhancement ultimately increases a  
7 defendant's potential sentence. Therefore, defense counsel's objections relating to the evaluation  
8 of a defendant's prior criminal history in the determination of what constitutes a serious crime, and  
9 the suggested approach of limiting the Court's inquiry, are both **DENIED**. Therefore, this Court will  
10 conduct a formal *Sell* hearing, which will be scheduled at the next Status Hearing in accordance with  
11 the parties' availability.

12 The Court, however, makes no determination at this time whether there are important  
13 governmental interests at stake in this particular case. That determination will not be made until the  
14 Court has reviewed the entire record.

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16 **IT IS SO ORDERED.**

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18 DATED: April 16, 2008

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20 M. James Lorenz  
21 United States District Court Judge  
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